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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,568	03/29/2004	Rick Mountjoy	MR03-0001	1391
45467	7590	02/09/2007	EXAMINER	
GARY F. WITTING 5834 EAST OAK STREET SCOTTSDALE, AZ 85257			CAJILIG, CHRISTINE T	
			ART UNIT	PAPER NUMBER
			3637	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/811,568	MOUNTJOY, RICK
	Examiner Christine T. Cajilig	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 March 2004.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 3/29/04.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: Foreign References.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election of Group I drawn to a construction element and the method of making a construction element in the reply filed on 12/20/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 26-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/20/06.

Applicant's further election of the species requirement in the reply filed on 12/20/06 is acknowledged. Applicant elects with traverse for Species 1 of Group 1. It appears that Applicant intends that the traversal is on the ground(s) that Species 1 and Species 2 are not separate species. This is not found persuasive because Figure 1 shows a double layer beam with a flexible element having a course of blocks mounted on both the top and bottom surfaces of the flexible element which sandwiches the flexible element, while Figure 2, above arrows 112 shows a single layer beam with a flexible element having a single course of blocks mounted on the top surface of the flexible element. Furthermore, Figure 3 shows a single layer beam, such as the single layer beam in Figure 2 in use above a curved form element 310. Thus, Species 1 and 2 are patentably distinct species.

Upon further review of the claims, claims 22 – 25 also read on the elected Species 1, and thus, claims 1-25 and 29-31 will be examined on the merits. As Applicant has elected Group I, Species 1, Applicant's argument of the Species in Group 2 is moot at this time.

The requirement is still deemed proper and is therefore made FINAL.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "438" in line 3 of page 11 and "708" in line 24 of page 14. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "106" in Figure 2, "300" in Figure 3, and "440" in Figure 4. Corrected

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drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The abstract of the disclosure is objected to because "flexible beam (74)" in line 9 of the abstract should read as "—flexible beam (10)—". Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: "then" in line 15 of page 5 and line 32 of page 12 should read as "—than—. " Reference number "20" in line 30 of page 9 is used to designate the adhesive; however, "20" has already been used to designate the surface of "16" as noted in line 19 of page 8. The recurring designation of "406-414," 420-426," 450-458," is misleading because reference numbers 407, 409, (odd numbers) etc. are not used in the drawings. Reference number

"406" in line 5 of page 11 should read as "—404—," because "404" was used to designate the beam as noted in line 27 of page 10.

Appropriate correction is required.

### ***Claim Objections***

Claims 2-5, 7, 9-14, 16-20, and 25 are objected to because of the following informalities: "A" should read as "—The—" in the first line of the dependent claims. Appropriate correction is required.

Claims 12 and 24 are objected to because of the following informalities: "element" should read as "—elements—" in the last line of the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 17, 22 and claims dependent therefrom, 23, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the second surface" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the organic material" in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 is further indefinite because of the use the word "organic" to describe a plastic material. The term "organic" is well known to mean as something that is derived from living organisms; thus, the use of the term "organic" to describe plastic is misleading and improper.

Claim 22 recites the limitation "the...second block" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 23 is indefinite because it is a method claim that depends from article claim 21. For purposes of examination, claim 23 is interpreted as being dependent from method claim 22.

Claim 25 recites the limitation "the second surface" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 13, 15, 19-25, and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Killen (U.S. Publication No. 2004/0128948).

Regarding claim 1, Killen in Figure 2 discloses a construction element comprising a flexible element (52) having a first surface (upper surface of 52 in contact with block

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30); and a first block element (30) having a portion (surface of 30 in contact with 52) of the first block attached to the first surface of the flexible block element.

Regarding claim 3, Killen discloses a construction element as discussed above and further discloses that the flexible element is made of a web material (Pg 4, Par 92).

Regarding claim 4, Killen discloses a construction element as discussed above and further discloses an adhesive means (Pg 4, Par 91) for attaching the first block element to the first surface of the flexible element.

Regarding claim 5, Killen discloses a construction element as discussed above and further discloses a second block element (40) attached to a second surface (lower surface of 52 adjacent to 40) of the flexible element.

Regarding claim 6, Killen in Figure 2 discloses a construction element comprising a flexible element (52) having a first surface (upper surface of 52 in contact with block 30) and a second surface (lower surface of 52 in contact with block 40); a first block element (30); and an adhesive layer (Pg 4, Par 91) substantially adhering the first block element to the first surface of the flexible element.

Regarding claim 7, Killen discloses a construction element as discussed above and further discloses a second block element (40); a second adhesive layer (Pg 4, Par 91), the second adhesive layer substantially bonding the second block element to the second surface of the flexible element (Pg 4, Par 91).

Regarding claim 8, Killen in Figure 4 discloses a construction element comprising a flexible element (50) having a first surface (surface of 50 adjacent to "a" and 20); and a first block element (a) and a second block element (20), the first and second block

elements attached to the first surface of the flexible element with a space (14) between the first and second block elements.

Regarding claim 13, Killen discloses a construction element as discussed above and further discloses a filling material (grouting material, see Pg 4, Par 94) at least partially disposed into the space (14) between the first and second block elements.

Regarding claim 15, Killen in Figure 4 discloses a construction element comprising a flexible element (50) having a first surface (surface of 50 in contact with "a" and 20); and a first block element (a) and a second block element (20), the first and second block elements attached to the first surface of the flexible element with a space (14) between the first and second block elements; and a spacer (cables, rods, etc. on Pg 5, Par 101) disposed between the first and second block elements.

Regarding claim 19, Killen discloses a construction element as discussed above and further discloses a material (grouting material, see Pg 5, Par 101) disposed into the space between the first and second block elements.

Regarding claim 20, Killen discloses a construction element as discussed above and further discloses that the material is mortar (Pg 4, Par 94).

Regarding claim 21, Killen in Figure 7 discloses a construction element comprising a flexible element (52) having a first surface (upper surface of 52 adjacent to "a" and 20), the flexible element having a curve, a first block element (a) and a second block element (20), the first and second block elements attached to the first surface of the flexible element with a space (14) between the first and second block elements; and a spacer (cables, rods, etc. on Pg 5, Par 101) placed between the first and the second

block elements to hold the curve. Furthermore, the method set forth in claims 22 and 24 would be inherent in constructing the structure set forth above.

Regarding claim 29, Killen in Figure 4 discloses a construction element comprising a flexible element (50) having a first surface (upper surface of 50 in contact with "a" and 20) and a second surface (lower surface of 50 in contact with 60 and "b"); a first block element (a) and a second block element (20), the first and second block elements (a, 20) attached to the first surface of the flexible element with a space (14) between the first and second block elements; a spacer (cables, rods, etc. on Pg 5, Par 101) disposed between the first and the second block elements; and a third block element (60), the third block element attached to the second surface of the flexible element (50). Furthermore, the method set forth in claims 23 and 25 would be inherent in constructing the structure set forth above.

Regarding claim 30, Killen in Figure 4 discloses a construction element as discussed above and further discloses a fourth block element (b), the third and fourth block element attached to the second surface of the flexible element (50) with a space (16) between the third and the fourth block element.

Regarding claim 31, Killen in Figure 4 discloses a construction element as discussed above and further discloses that the space between the third block element and the fourth block element is filled with a material (grouting material, see Pg 5, Par 101).

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Sato (U.S. Patent No. 4,226,060).

Regarding claims 1 and 2, Sato discloses a construction element comprising a flexible element (5) having a first surface (upper surface of 5 in contact with 2); and a first block element (2) having a portion (surface of 2 in contact with 5) of the first block attached to the first surface of the flexible block element and wherein the first block element is a masonry block (Col 2, Ln 40).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killen.

Regarding claims 9-11, Killen discloses a construction element as discussed above but does not disclose that the space can range from 6.0 centimeters to 0.1 centimeters, 3.0 centimeters to 1.5 centimeters, or 2.0 centimeters to 1.5 centimeters. It would have been an obvious matter of design choice to modify the block of Killen to have the space range from 6.0 centimeters to 0.1 centimeters, 3.0 centimeters to 1.5 centimeters, or 2.0 centimeters to 1.5 centimeters since such a modification would have involved a mere change in the size of the components and would allow for a varying

amount of flexibility to the beam. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 12, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killen in view of Flowers (U.S. Publication No. 2004/0003572 A1).

Regarding claim 12, Killen discloses a construction element as discussed above but does not disclose a wedge spacer placed in the space between the first and second block element. However, Flowers discloses a wedge spacer (40) placed in a space (50) between first and second block elements (1, 6). Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify Killen to include a wedge spacer placed in the space between the first and second block element as taught by Flowers to provide support and rigidity.

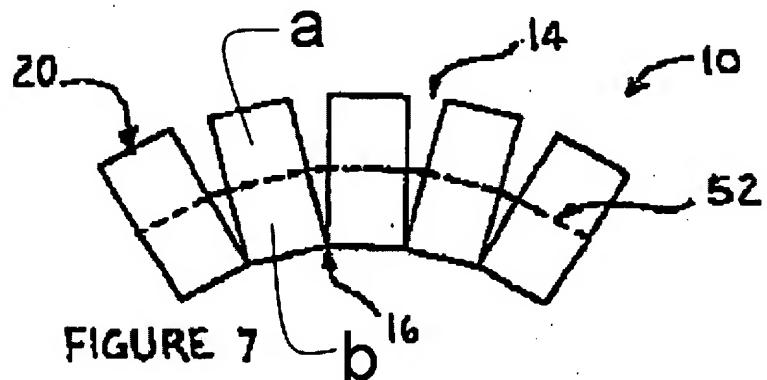
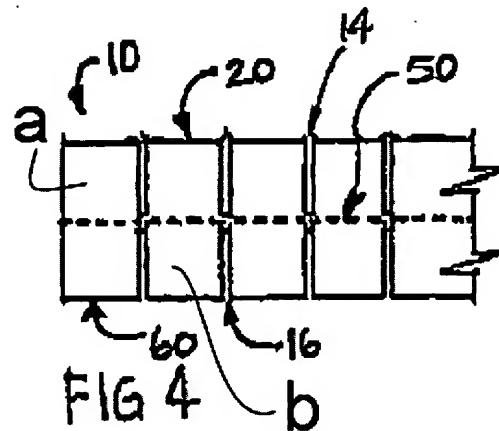
Regarding claim 14, Killen already modified by Flowers discloses a construction element as discussed above and further discloses that the filling material is mortar (Pg 4, Par 94).

Regarding claims 16-18, Killen discloses a construction element as discussed above but does not disclose that the spacer is made of metal or made of an organic material made of plastic. However, Flowers disclose a spacer (40) that can be made out of plastic or metals (Page 2, Par. 26). Therefore, it would have been obvious for a person having ordinary skill in the arts at the time of the Applicant's invention to modify Killen to include a spacer made of an organic material, an organic material made of

plastic or metal as taught by Flowers to provide a material with varying strengths

appropriate to an environment in which the blocks will be used.

**Annotated Figures**



Killen (U.S. Publication No. 2004/0128948)

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wang (U.S. Patent No. 6,794,054 B2) a flexible board; Workups

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et al. (U.S. Patent No. 5,640,818) a bendable brick wall; Rosenqvist (GB 2052598 A) a flexible beam; Uniroyal Inc. (AU 424478) a flexible building element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CTC *OTC*  
12/28/06

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